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Before the FEDERAL COMMUNICATIONS COMMISSIALON MUNICATIONS C Washington, D.C.

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MM Docket No. 93-69

In the Matter of Amendment of Section 73.202(b) Table of Allotments FM Broadcast Stations (San Carlos and Oracle, Arizona)

RM-8106

FCC - MAIL ROOM

REPLY COMMENTS OF DESERT WEST AIR RANCHERS CORPORATION

Ranchers Desert West Air Corporation ("Desert West"). permittee of FM Station KCDX (formerly KOYF), Channel 279A, San Carlos, Arizona, hereby submits its Reply Comments in the abovecaptioned rule making proceeding.

HISTORY

This proceeding involves a proposal advanced by Desert West to amend the FM Table of Allotments by substituting FM Channel 276C2 for Channel 279A at San Carlos, Arizona which required the substitution of Channel 279A for 276A at Oracle, Arizona, licensed to FM Station KLQB.

The Commission, on March 31, 1993, advanced the same proposal in its NOTICE OF PROPOSED RULEMAKING AND ORDER TO SHOW CAUSE ("NPRM") which also ordered KLQB to Show Cause why its license should not be so modified.

In response to the NPRM. Desert West supplied its Comments supporting its original proposal and Golden State supplied its COUNTER PROPOSAL OF GOLDEN STATE BROADCASTING CORPORATION AND RESPONSE TO ORDER TO SHOW CAUSE ("Counter Proposal"). The Counter Proposal requires the dismissal of Desert West's Petition, the

List A B C D E

deletion of Channel 276B in Cananea, Sonora, Mexico, and the substitution of Channel 275A or 277A for Channel 276A at Comobabi, Arizona.

The Golden State Counter Proposal is technically deficient and without merit and should be dismissed for the following reasons:

UNPRECEDENTED ACTION

Golden State's Counter Proposal requires the <u>deletion</u> of Channel 276B at Cananea, Sonora, Mexico. Golden State asserts that this deletion "is unlikely to inhibit Mexican concurrence". The only <u>unlikely</u> outcome is that <u>Mexico would accepted</u> such a proposal. In EXHIBIT 3 of Golden State's own Counter Proposal, it can be seen that Mexico is trying to add <u>TWO NEW</u> Class A allocations, Channel 218A and Channel 249A, to Cananea, the same community in which Golden States wants to delete a higher power Class B allocation. Such an unprecedented move by Mexico would be up for "Miracle" status.

Furthermore, to the best of Desert West's knowledge and as the Commission knows best, Mexico has NEVER allowed a straight deletion, has only occasionally allowed an equal swap, and Mexico has at times "taken" the proposed swap channel and not given up the deletion. In fact, the Commission has routinely returned proposals, as not being viable, that just requested an equal channel swap with Mexico.

Golden State relies on the <u>proposed</u> adoption of the 1992

spectrum in their border communities (which will grow and prosper under the North American Free Trade Agreement), thus allowing a US broadcaster to add the 40th plus signal to the Tucson radio market. This type of proposal shows a basic disrespect for Mexico and the Commission. On the other hand, Desert West's proposal is fully compliant with the existing US/Mexico treaty and respects all their allocations and stations. Even if Mexico were willing, in this one case, to grant Golden State's request, it would set an untenable precedent for the Commission and the Department of State.

Because Golden State's Counter Proposal relies on a yet to be adopted treaty (of which no text has been released) and requires an unprecedented action by Mexico, the Commission should dismiss the Golden State Counter Proposal as premature and one which plainly does not warrant consideration by the Commission (1.400 e).

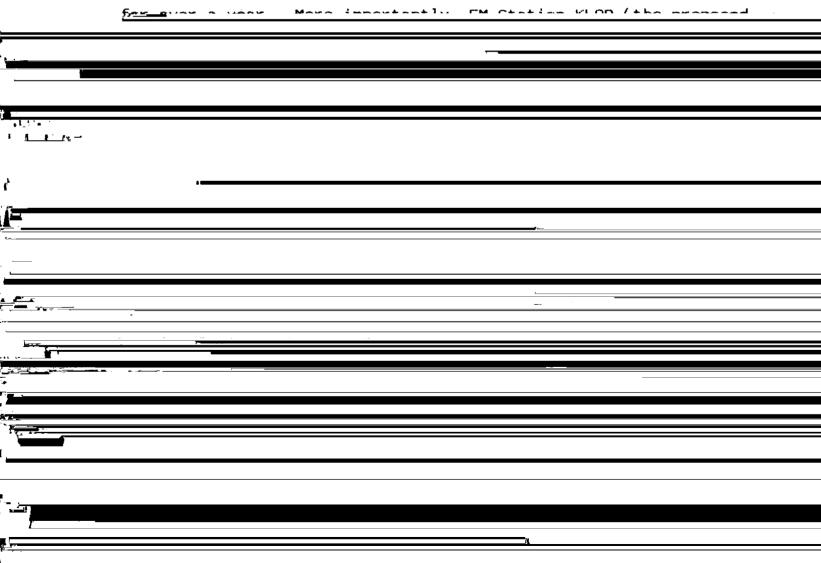
SHORT SPACED

Golden State's Counter Proposal also requires the substitution of Channel 276A (non-commercial) at Comobabi, Arizona. Golden State has proposed replacement Channels 275A or 277A at that community. Again, according to EXHIBIT 2 of Golden State's own Counter Proposal, both allocations are short spaced more than 55 KM with stations or allocations at Nogales, Sonora, Mexico. Channel 275A is short spaced to first adjacent XHQT-FM Channel 274B, Nogales and Channel 277A is short spaced to XHRZ-FM Channel 278B, Nogales. The reason for the short spacing is that new US allocations (which the Comobabi replacement Channels would be) are 6KW Class A which under the current Commission rules MUST be considered Class B with respect to Mexico (73.207 b 3). Golden

State's engineering firm of Hatfield and Dawson must agree with this analysis because their own engineering report shows the short space. The Commission has made it clear that "[c]ounterproposals must be technically correct at the time of filing" <u>Broken Arrow</u>, Oklahoma, 3 FCC Red. 6507, 6511 n.2 (1988). Because Golden State's Counter Proposal is not technically compliant when filed, it should be dismissed. Desert West's proposal, however, is fully compliant with all existing rules and treaties.

PETITIONER VIABILITY

Golden State Broadcasting Corporation should more rightly be called Golden State Broadcasting Corporation <u>Debtor in Possession</u> (BALH-930216EB). Golden State has been in Chapter 11 bankruptcy



Oracle. Channel 266C2 or Channel 270C2 could be allocated to Oracle pt organization 111 00 00 00 00 00 There allocations usuald

CERTIFICATION

I, Ted Tucker, do hereby certify that I am President of Desert West Air Ranchers Corporation and that the foregoing "Reply Comments of Desert West Air Ranchers Corporation" were prepared by myself or under my direction and are true and correct to be best of my knowledge.

Ted Tucker Jue h

President
Desert West Air Ranchers Corporation
PO Box 36717
Tucson, Arizona 85740
602-797-1008

Date: June 6, 1993

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CERTIFICATE OF SERVICE

I, Ted Tucker, do hereby certify that I have caused a copy of the foregoing "Reply Comments of Desert West Air Ranchers Corporation" to be sent by first class United States Mail, postage prepaid, this 6th day of June 1993:

*Secretary
Federal Communications Commission
1919 M Street N.W.
Washington, D.C. 20054

Ms. Nancy Joyner Federal Communications Commission 2025 M Street N.W. Washington, D.C. 20554

Eleanor Ballard, President Golden State Broadcasting Corporation Station KLQB-FM PO Box 35367 Tucson, Arizona 85740

(NOTE: According to the USPS, PO Box 26040, Tucson, AZ is no longer a viable address for Golden State)

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